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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION

6 HO KEUNG TSE,

7 Plaintiff,

8 vs.

9 APPLE, INC., et al.,

10 Defendants.
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Case No: C 06-6573 SBA

ORDER RE OSC

13 Plaintiff Ho Keung Tse (“Plaintiff”) brings the instant patent infringement action
14 against various Defendants alleging infringement of U.S. Patent No. 6,665,797 (“the ‘797
15 patent”). On December 11, 2013, Judge Susan Illston issued an Order finding that claims
16 1-5, 13, 16, 17, 20, and 23-26 of the ‘797 patent are invalid for lack of written description
17 under 35 U.S.C. § 112. See Ho Keung Tse v. Google, Inc., 2013 WL 6502478, at *6 (N.D.
18 Cal. 2013). On July 16, 2014, the Federal Circuit affirmed Judge Illston’s Order. On July
19 28, 2014, the Court issued an Order to Show Cause (“OSC”), directing the parties to show
20 cause in writing why this case should or should not be dismissed on the ground that the
21 claims of the ‘797 patent at issue in this case are invalid. Dkt. 231.

22 On August 4, 2014, the parties responded to the Court’s OSC. Dkt. 232, 233, 235.
23 In their response, Defendants urge the Court to dismiss the instant action with prejudice
24 because the claims of the ‘797 patent at issue in this case are the same claims found to be
25 invalid in the Google litigation. Dkt. 233. For his part, Plaintiff does not dispute that the
26 claims of the ‘797 patent at issue in this action have been declared invalid. Dkt. 235.
27 However, Plaintiff contends that dismissal is inappropriate at this juncture because he
28 intends to file a “ ‘Combined Petition For Panel Rehearing And Petition For Rehearing En

1 Banc' with the Federal Court very soon." Id. Pursuant to the Rules of Practice of the
2 United States Court of Appeals for the Federal Circuit, Plaintiff has thirty-days from entry
3 of judgment to file a petition for panel rehearing. Federal Circuit Rule 40(e). Pursuant to
4 the Rules of the Supreme Court of the United States, Plaintiff has ninety days from entry of
5 judgment to file a writ of certiorari. See Supreme Court Rule 13. If Plaintiff timely files a
6 petition for panel rehearing, the time for him to file a petition for a writ of certiorari runs
7 from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of
8 judgment. Id.

9 Accordingly,

10 IT IS HEREBY ORDERED THAT:

11 1. Upon the completion of the appeals process in the Google litigation, the
12 parties shall each submit a memorandum, not to exceed five (5) pages, addressing why this
13 case should or should not be dismissed. Alternatively, the parties may file a stipulation
14 requesting that the instant action be dismissed with prejudice.

15 2. The OSC issued on July 28, 2014 is discharged.

16 IT IS SO ORDERED.

17 Dated: 8/19/2014

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19 SAUNDRA BROWN ARMSTRONG
20 United States District Judge
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